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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of GTE Corporation, Transferor,
And Bell Atlantic Corporation, Transferee,
For Consent to Transfer of Control

CC Docket No. 98-184

COMMENTS OF WORLDCOM, INC.

Pursuant to the Public Notice released on May 31, 2001 (DA 01-1325), WorldCom, Inc. ("WorldCom") hereby submits comments concerning Verizon's request that the Federal Communications Commission ("Commission" or "FCC") modify the Bell Atlantic/GTE Merger Order¹ and remove the Advanced Services Separate Affiliate Condition before expiration of the nine-month sunset period to which Verizon agreed.

If the Commission concludes that Verizon has met its burden to justify any modification of the merger conditions, it should (1) clarify the application of Verizon's continuing non-discrimination obligations to the separate advanced service division that would take over the functions of the separate advanced services affiliate;² and (2) ensure that updated advanced services performance measurement metrics adopted by the New York State Public Service Commission and the California Public Utilities Commission are adopted and applied to the

¹ *In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order in CC Docket No. 98-184 (rel. Jun. 16, 2000) ("Merger Order").

² See *Merger Order*, Appendix D, para. 12(c).

advanced services divisions in legacy Bell Atlantic states and legacy GTE states respectively, as contemplated in the Merger Conditions.³

Verizon's request represents yet another case where a Bell Operating Company ("BOC") strikes agreement with the FCC on conditions to its merger, the FCC approves the merger as a result, and the BOC then tries to modify the conditions based largely on a claim that the conditions were misguided from the beginning. The Commission's Merger Conditions cannot be discarded simply because the BOC no longer likes the terms to which it agreed. The Commission imposed "the stringent and enforceable merger conditions proposed by the Applicants" for the very specific purpose of preventing the harm to the public interest that the Commission found the merger would otherwise cause,⁴ and the Commission determined that the separate affiliate condition for advanced services was critical to ensure that Verizon treats competing advanced services providers fairly. If the Commission grants Verizon's request to modify the condition to allow it to immediately provide advanced and more traditional local telecommunications services through an office or division of its incumbent local exchange company affiliate, it should ensure that other safeguards provide the same protection that the condition would otherwise offer.

I. STANDARD FOR MODIFICATION OF COMMISSION ORDERS

The Merger Order expressly states that "[t]he Commission may, at its discretion ... modify[] the conditions."⁵ Moreover, section 416(b) of the Communications Act, 47 U.S.C. §

³ See *Merger Order*, Attachment A, para. 4.

⁴ *Merger Order*, para. 213.

⁵ *Merger Order*, para. 345 (footnote omitted).

416(b), authorizes the Commission “to suspend or modify its orders upon such notice and in such manner as it shall deem proper . . . [e]xcept as otherwise provided in this Act,” and nothing in the Act provides otherwise with respect to the Merger Conditions.⁶

The key question is therefore what standard the Commission should apply in exercising its discretion to modify a condition. The Commission should apply the same standard it uses in the analogous situation of waivers to Commission rules: a waiver is appropriate only if “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”⁷ The question is thus not simply whether the modification is in the public interest because the Commission must give some weight to the finding that the original condition serves the public interest. Here, the Commission is not considering *de novo* how long the separate affiliate requirement should remain in effect after the *ASCENT* decision, and its previous adoption of a nine-month period is presumptively correct. The Commission must find that some new or unexpected circumstances make the original condition inappropriate and that the public interest is adequately protected in the current circumstances by eliminating the condition or replacing it with a different condition.⁸

Moreover, as the Commission previously recognized, modification or waiver of merger conditions is proper only if “tailored in a way that affirmatively and identifiably promotes the underlying purpose of the condition.”⁹ In the case of the separate affiliate requirement, the

⁶ 47 U.S.C. § 416(b). Cf. 47 C.F.R. § 1.3 (Commission rules may be amended or waived for good cause shown).

⁷ *In the Matter of GTE Service Corporation, Petition for Waiver of Section 32.27(c) of the Commission’s Rules*, Memorandum Opinion and Order (rel. Feb. 20, 2001) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)).

⁸ See *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 383-84 (1992) (“[a] party seeking modification of a consent decree may meet its initial burden by showing either a significant change either in factual conditions or law.”).

⁹ *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission’s Rules*, CC Docket 98-141,

Commission's "fundamental goal in adopting this condition was to ensure that competing carriers receive effective, nondiscriminatory access to the facilities and services ... that are necessary to provide advanced services."¹⁰

II. IF THE COMMISSION GRANTS VERIZON'S REQUEST, IT SHOULD CLARIFY APPLICATION OF VERIZON'S NON-DISCRIMINATION OBLIGATIONS TO ITS SEPARATE ADVANCED SERVICES DIVISION AND ENSURE THAT VERIZON COMPLIES WITH UPDATED PERFORMANCE METRICS

If the Commission decides that Verizon has justified its request for early termination of the separate affiliate requirement,¹¹ the Commission should clarify in two respects Verizon's continuing obligation to provide reasonable and non-discriminatory access to advanced services facilities and services.

The first clarification involves the separate advanced services division that would replace the advanced services separate affiliate. Paragraph 12(c) of the Merger Conditions directs that, in the event the separate affiliate requirement is removed, Verizon must still provide advanced services "through a separate Advanced Services office or division within the LEC."¹² The paragraph further mandates that this new division "continue to use the same interfaces, processes, and procedures made available by the incumbent LEC to unaffiliated providers of Advanced Services for pre-ordering, ordering, provisioning, and repair and maintenance of Advanced

Second Memorandum Opinion and Order, para. 21 (rel. Sept. 8, 2000) ("*SBC/Ameritech Plug and Play Order*") (footnotes omitted).

¹⁰ *SBC/Ameritech Plug and Play Order*, para. 21.

¹¹ WorldCom notes that to the extent Verizon argues that the costs of the separate affiliate requirement outweigh its benefits, it is simply disputing the Commission's contrary findings. WorldCom also notes that Verizon's claim to the FCC that compliance with the merger condition imposes substantial costs appears to be inconsistent with representations to various state commissions.

¹² *Merger Order*, Appendix D, para. 12(c).

Services.”¹³ Moreover, Verizon’s retail operations must “use the interfaces available to CLECs for processing a substantial majority ... of Advanced Services.”¹⁴ Thus, even if the separate affiliate requirement is terminated, the Merger Conditions provide safeguards to ensure a level playing field for competitors. If the Commission decides to grant Verizon’s request, it should additionally clarify the below pro-competitive points, which are implicit in the Merger Conditions, so as to “ensure that competing providers of advanced services receive effective, nondiscriminatory access to facilities and services of the merged firm’s incumbent LECs that are necessary to provide advanced services.”¹⁵ Specifically, the Commission should reaffirm or clarify that:

- (1) Verizon must make available to competitive local exchange carriers (“CLECs”) on a nondiscriminatory basis all of the unbundled network elements and services that it makes available to its separate advanced services division.
- (2) Verizon must negotiate in good faith concerning, and implement, reasonable and nondiscriminatory interfaces, processes, and procedures, including business rules, for pre-ordering, ordering, provisioning, and repair and maintenance of advanced services.
- (3) Verizon's duty not to discriminate with respect to advanced services includes the duty to give CLECs the same opportunity as its advanced services division (a) to participate in its planning process for advanced services and (b) to conduct tests and trials of advanced services technology.
- (4) Verizon may not use termination of the separate affiliate requirement as an excuse to stop providing any feature or service, or any interface, process, or procedure for pre-ordering, ordering, provisioning, and repair and maintenance of advanced services, and Verizon must give reasonable, nondiscriminatory notice to CLECs of any proposed change in its current policies and practices.

By specifically affirming these principles, the Commission will help to ensure that the purpose of the advanced services separate affiliate requirement and its associated sunset provision is achieved.

¹³ *Id.*, para. 12(c)(1).

¹⁴ *Id.*

¹⁵ *See Merger Order*, para. 261.

Second, the Commission should ensure that Verizon implements updated performance measurement metrics with respect to a separate advanced services division. The Merger Conditions require that Verizon implement 18 performance measurement metrics which are designed both to facilitate “best practices” and to ensure that Verizon’s service to telecommunications carriers does not “deteriorate.”¹⁶ In the legacy Bell Atlantic service areas, the metrics “are based on the performance plan adopted by the New York Public Service Commission in connection with Bell Atlantic’s Section 271 proceeding,”¹⁷ and, in legacy GTE service areas, the metrics “are based on the California Public Utilities Commission’s performance plan applicable to GTE.”¹⁸

Because these metrics continually evolve, Verizon is required to notify the Chief of the Common Carrier Bureau if there are “any changes to the design or calculation of these measurements adopted by the New York or California State commissions.”¹⁹ The Conditions also require that Verizon and the Chief of the Common Carrier Bureau “shall jointly review the Bell Atlantic/GTE measurements on a semi-annual basis, **to determine whether measurements should be added**, deleted or modified.”²⁰ It is therefore abundantly clear that the Merger Conditions recognize that performance measurement metrics must evolve and look to both the New York Public Service Commission and the California Public Utilities Commission as models for the additions and other changes that will inevitably become necessary.

Whether or not the Commission grants Verizon’s request and dismantles the Separate Affiliate prior to the agreed-on sunset date, it should make certain that these provisions are given

¹⁶ *Id.*, para. 279.

¹⁷ *Id.*, Appendix D, para. 17(a).

¹⁸ *Id.*, para. 17(b).

¹⁹ *Merger Order*, Attachment A, para. 4.

²⁰ *Id.* (emphasis added).

effect with respect to the separate advanced services division. To that end, the Commission should see that any new advanced services performance metrics that have been adopted by either the New York State Public Service Commission or the California Public Utilities Commission are incorporated into the Merger Conditions.

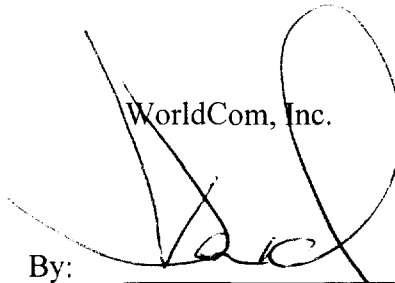
For example, in December 2000, the New York Commission added a significant number of DSL and Line Sharing measures to Verizon's Performance Assurance Plan. The new measurements added to the plan were agreed to by Verizon in the Carrier-to-Carrier proceeding (Case 97-C-0139) and should be incorporated into the Merger Conditions as soon as possible. In addition, New York is expected to approve new measures for line-splitting in the next few months, and they should also be incorporated into the Merger Conditions.

The Commission should make clear that current and new metrics apply to Verizon's advanced service division just as they applied to its advanced services affiliate, so that, for example, Verizon's reports of performance with respect to current and new metrics should include data on its performance for its separate advanced services division.

III. CONCLUSION

The Commission should evaluate Verizon's requests in light of the factors set forth above and ensure that competing providers of advanced services are protected if it modifies the condition to permit early termination of the separate affiliate requirement.

Respectfully submitted,


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Dated: June 14, 2001

CERTIFICATE OF SERVICE

I, Lonzena Rogers, hereby certify, that on this fourteenth day of June, 2001, I have caused a true and correct copy of "Comments of WorldCom, Inc." in the matter of Verizon's Request for Relief from Bell Atlantic/GTE Merger Conditions CC Docket 98-141 and 98-184, served by United States Postal Service and hand delivery on the following:

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